IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2249 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SIMON YUNABHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2249 of 1994

MR MUKUL SINHA for Petitioner No. 1-4

MR.M.S. RAO, ASSISTANT GOVERNMENT PLEADER for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 15/16th MARCH 2004

ORAL JUDGEMENT

15th MARCH 2004

This petition was filed on 31.01.1994 and on

15.02.1994 the Court passed the following order:

"Rule. To be heard with Special Civil Application No.475 of 1981."

2. The matter then got consideration by this Court on 25.08.1999, when this Court reposing confidence in the Government, after taking into consideration the subject matter of this petition, was pleased to dispose of the same by a judgement wherein it was observed that:

"2. Learned counsel for the petitioners does not dispute that the petitioners have already made a representation on 11.7.1998 to the Pay Anomalies Committee and the same is pending. It is the say of the petitioners that, that representation is kept pending by that Committee on the ground that the matter is subjudice before this Court. (emphasis supplied)

3. However, if we go by the facts of this case, it is a matter where the petitioners have to first approach to the Pay Anomalies Committee constituted by the Government of Gujarat, Finance Department vide its resolution No.PGR 1098-34-M dated 20th May 1998 and this has been done by the petitioners. However, in case, the Committee is not considering the representation of the petitioners on the ground that the matter is subjudice then that hurdle should have been removed by the petitioners themselves and this petition should have been withdrawn by the petitioners but this approach of the petitioners to ride over two horses is difficult to appreciate.

4. In the result, this special civil application is disposed of in terms that the petitioners have already approached to the Pay Anomalies Committee and this petition, at this stage, cannot be entertained. It is expected of the Pay Anomalies Committee to decided the representation of the petitioners in accordance with law. If, ultimately, the petitioners are not satisfied with the decision of the Pay Anomalies Committee on their representation then it is open to them to file a simple note for revival of this special civil application. The special civil application and Rule stand disposed of in the terms aforesaid with no order as to

costs." (emphasis supplied)

3. It is painful that the Government which is complaining against the conduct of the petitioners itself is found to have been acting in a most lethargic manner in the matter of such great importance, having far reaching consequences. Despite the fact that the Anomaly Committee submitted its report on 15.05.2000, the same is pending for consideration till date, i.e. 15.03.2004. The Government has not found time to redress the grievances of the petitioners either by accepting the Anomaly Committee's report or by rejecting the same. This being the hard reality, the Government cannot be heard of complaining that the petition is suffering from delay and laches. It is in this background that on petitioners filing Misc. Civil Application No.1826 of 2002, the petition is revived. The Court is pleased to grant the prayers in terms of para 8(A). In Misc. Civil Application it is stated that:

"4. The petitioner submits that thereafter the petitioners had once again written to the Additional Chief Secretary, Health and Family Welfare vide letter dated 9.9.1999 drawing the attention of the Government to the order of the High Court and requesting for an early decision from Pay Anomalies Committee. A copy of the said letter was also given to the Chairman of the Pay Anomalies Committee. The said letter dated 9.9.1999 is annexed hereto and marked as ANNEXURE II. As the Govt did not respond to the aforesaid letter, a legal notice was also issued by the advocate of the petitioner vide notice dated 28.8.2001 pointing out that while the Pay Anomalies Committee had considered the representation made by the petitioners and had also heard the matter on 27.5.1999 and had forwarded its report to the Government of Gujarat for necessary action, the Government was not taken any action thereon. It is submitted that as the recommendation of the Committee was confidential, the petitioners were not able to know about its content. The copy of the legal notice dated 28.8.2001 is annexed hereto and marked as ANNEXURE III.

5. The applicants submit that more than one year has passed since then yet neither the Government has taken any action on the reports submitted by the Pay Anomalies Committee nor the Government has informed the petitioner or its

Association of the decision of the Pay Anomalies Committee. In the result the petitioners are without any relief or remedy."

16th MARCH 2004

4. Today, when the matter is taken up for hearing, the learned Assistant Government. Pleader, Mr.M.S. Rao filed further affidavit. In the earlier part, i.e. paras 1 to 5 of this affidavit, it is explained as to why the order dated 17.02.2004 could not be complied with and also about non communication of order dated 04.03.2004.

4.1 In para 6 it is stated that,

"6. Insofar as your Lordship's directions to the deponent herein to place on record a copy of the Pay Anomaly Report is concerned, I most respectfully say and submit that no such report is available with the Health Department of the State Government. It is pertinent to submit that the Health Department has since been advised by the Finance Department on 6.3.2004 that it might be brought to the kind notice of the Hon'ble Court that the report in question is not published officially. In this nature of the situation, I most sincerely regret my inability in this behalf. I however, hasten to add that I shall be ready and willing to comply with your Lordship's such further directions as may be passed by this Hon'ble Court upon a perusal of the Finance Department's views on 6.3.2004 on the status of the report, which shall be placed before your Lordships .. .."

4.2 Mr.M.S. Rao, the learned Assistant Government Pleader also made available the file containing an 'advice' of the Finance Department dated 06.03.2004. Health and Family Welfare Department had sought for an 'advice' from the Finance Department, pursuant to the orders of this Court dated 17.02.2004 and 04.03.2004. By order dated 04.03.2004 the Secretary, Health and Family Welfare Department was directed to remain personally present before this Court at 11.00 AM on 10.03.2004. It is in this connection that 'advice' was sought for from the Finance Department which has opined vide Noting dated 06.03.2004 that, 'report of the Anomaly Committee is submitted to the State Government on 15.05.2000. Thereafter, the State Government has passed various Resolutions on 11.01.2001, 31.01.2001, 27.11.2001 and 10.02.2003, and the Subcommittee of the Cabinet is

appointed for considering the report of the Pay Anomaly Committee. It is decided not to produce the Pay Anomaly Committee's report before the Court'. It is also recorded that this decision is taken after a communication from the Registrar, High Court of Gujarat through Legal Department was received. It is also recorded that, 'it is decided that the report of the Pay Anomaly Committee be not supplied to the Civil Services Tribunal'. Thereafter, Additional Secretary, Shri K.D. Mahida of the Finance Department has placed the following noting:

> "We have not published the Anomaly Committee Report officially. However, Hon'ble High Court has directed to furnish the report of the Pay Anomaly Committee.
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> It may be brought to the notice of Hon'ble High Court that the report is not published officially. However, for information of Lordship it can be shown to him of course, relevant portion relating to the petitioner's cadre "Mental Attendant" and not the whole report. Hon'ble Court may also be requested not to place it on record. Even though there is insistence for furnishing the whole report and Hon'ble Court wants to take it on record, the further time may be obtained and appeal be filed after obtaining sanction/ permission of Legal Department.
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> For such a request timely submission with due respect to the Hon'ble Court needs to be done failing to which some misunderstanding of wilful disobeying of Hon'ble Court's orders will be presumed. Looking to the Hon'ble High Court's order dated 17.2.2004 (p.183), the responsible officer of H & F.W Department. should have remained present in the Court and briefed the Government Pleader, perhaps, the position would have been different.
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> Now we may ask the Deptt. to adopt the course of action as suggested above. (A.P. 13/ NS and above)."

5. In view of the aforesaid noting the learned Assistant Government Pleader, Mr.Rao showed his willingness to make available the relevant part of Pay Anomaly Committee's report. But then this Court has declined to look into the same, because what is required to be done in the matter is that the report which is

submitted to the Government on 15.05.2000, should be considered by the Government and a decision should be taken one way or the other. The order directing the Government to place the Pay Anomaly Committee's report on record ought not to have been interpreted by the authorities to mean as if the order is passed for the purpose of satisfying the whim of the Judge concerned. In fact, the Pay Anomaly Committee was appointed pursuant to order passed by this Court in this very petition by order dated 25.08.1999. The order was passed looking to the nature of the dispute which in the considered opinion of this Court was such which is required to be resolved by the Government at its level. That is why the Court reposed confidence and directed the Government to appoint a Pay Anomaly Committee and the report submitted by such Pay Anomaly Committee be considered by the Government. It goes without saying that such consideration has to be within reasonable time. The said confidence is not responded to by the Government. This is apparent from the fact that despite the fact that the Pay Anomaly Committee submitted its report on 15.05.2000 till 16.03.2004 the Government has not considered the said report and has not decided as to whether the same should be accepted or not.

It is in this background that the present petition is required to be considered by this Court. An attempt on the part of the Court to give an opportunity to the Government to solve a problem of this amplitude is not responded as was expected. Not only it has failed but has also caused loss of time of more than five years. The petition was filed in the year 1994, after five years when it reached hearing, the Court thought it fit to give an opportunity to the Government to find a solution to the problem. But then only due to inaction on the part of the Government that after five years the matter is required to be considered by this Court.

6. Mr.M.S. Rao, the learned Assistant Government Pleader strenuously submitted that the petition is not required to be entertained on the ground of delay. According to Mr.Rao the petition is filed in the year 1994, mainly raising a grievance against the Government Resolution of the year 1971. It is not to be lost sight of that the matter pertains to pay fixation and the injustice resulting therefrom which is declared to be of recurring in nature by the Honourable the Apex Court by its pronouncement on the subject. There is no question of delay in such type of cases. Assuming for the sake of argument that there is delay, Government cannot be allowed to plead the same when the Government itself has

delayed the matter by not considering the report of the Pay Anomalies Committee, which was required to be set up under the orders of this Court, so as to see that the Government is able to focus its attention to such a grave problem in an expeditious manner and decide its course of action.

6.1 Mr.M.S. Rao, the learned Assistant Government Pleader also contended that the present petition is not maintainable at the instance of an unrecognised union. The question of recognition and maintainability of the petition at the instance of an unrecognised union is insignificant because the nature of the grievance ventilated in this petition is such. Besides, this contention was never raised when the matter was earlier considered by this Court and disposed of on 25.08.1999. Therefore, this contention is rejected.

7. Mr.Rao, the learned Assistant Government Pleader also contended that the petition is not maintainable because it is filed in representative capacity. Looking to the nature of the grievance, a petition can be filed only in representative capacity. Every Government servant, more particularly such lowly paid servants cannot be directed to move the Court by filing petition individually. Therefore, this Court holds that this petition is maintainable at the hands of the present petitioners, in representative capacity.

8. The learned advocate appearing for the petitioners in the matter submitted that petitioner no.4 and other similarly situated persons who are represented by the President, Secretary and the Joint Secretary of the 'Mental Hospital Staff Association, Class III, Gujarat State', were serving as Attendants. At the relevant time there were different categories, such as, Head Male Attendant, Head Female Attendant, I Grade Female Attendant, II Grade Male Attendant, III Grade Male Attendant, IV Grade Male Attendant and IV Grade Female Attendant. As set out in para 6 of the petition, they were having different pay scales like Rs.50-2-60 to Rs.30- 1/2 -35. The learned advocate also pointed out that the services of these attendants do not fall in Class IV as specifically provided under the Bombay Civil Service Rules, 1959 (hereinafter referred to as "BCS Rules"). Rule 9 of the BCS Rules provides definitions. Subrule (27) of Rule 9 defines,

> "Class IV Service means service performed by the Government servants included in Appendix III and service remunerated in a time scale of pay the

maximum of which does not exceed Rs.270 in the case of Government servants not so included.

Under subrule (27) of Rule 9 of BCS Rules certain exceptions are mentioned. These exceptions envisage that the Government servants mentioned therein are treated 'superior' for all purposes. In the list of these exceptions, Item No.(vi) relates to 'Mental Hospital Attendants'. These exceptions are in two categories, viz. 'new entrants' and 'others'. In item no.(vi), against the column, 'others', 'Mental Hospital Attendants' is mentioned. The submission of the learned advocate is that by virtue of this subrule (27) of Rule 9 of BCS Rules and by virtue of list of exceptions made thereunder, 'the Mental Hospital Attendants' are definitely not Class IV servants and they are superior to Class IV. He submitted that despite this clear position under the Statute, the authority adopted a Resolution on 14.06.1971, titled as "Gujarat Civil Service Pay Rules, 1969- Mental Hospitals in Gujarat--- Revision of Pay Scales and the Resolutions" which reads as under:

"Government is pleased to sanction that the posts of Attendants attached to the Mental Hospitals should be considered in Class IV Category."

The learned advocate for the petitioners strenuously submitted that this Resolution is without authority, as by a Resolution, the Government could not have amended and changed the position of 'Mental Hospital Attendants'. By a mere stroke of pen, by describing the attendants attached to the Mental Hospital to be of Class IV, is not only unjust, arbitrary but also illegal as it has no sanction of law. The learned advocate submitted that in fact the background in which this Government Resolution is issued deserves to be noted. It is set out in para 7 of the petition. He submitted that, it so happened that the pay scales which were prevailing in the year 1948 were revised in the year 1964, were not considered by the First Pay Commission chaired by the Honourable Mr. Justice Akbar S. Sarela. That is why when the matter was represented to the Government by the 'Mental Hospital Attendants', the Government by its executive order, i.e. the aforesaid Government Resolution decided to revise the pay scales of the 'Mental Hospital Attendants'. But while doing so, for no valid reasons the authority provided that the Attendants attached to the Mental Hospital will be considered in Class IV category. He submitted that besides the aforesaid injustice done to various categories of these Attendants, one more injustice was done and that was the 'Head Male Attendant'

was given the revised pay scale of Rs.100-150/-, while all other categories including that of Head Female Attendant Ist Grade, Male Attendant IInd Grade, Male Attendant IIIrd Grade, Attendant IVth Grade, Female Attendant Ist Grade and Female Attendant IVth Grade were given one single scale of Rs.90-110/-. By virtue of that the category of Ist Grade Male Attendant which was in the pay scale of Rs.80-1-85 also got the pay scale of Rs.90-110/-, and the IVth Grade Male Attendant who was in the pay scale of Rs.65- 1/2 -70/-, also got the pay scale of Rs.90-110/-.

9. The learned advocate submitted that the matter was represented continuously to the Government authorities without there being any fruitful result. He submitted that, it was represented to the Government that the pay scale of Rs.95-105/-, of the drivers was revised to Rs.125-200/-. As against that the same pay scale received by the Head Attendant was revised to Rs.100-140/-, by an executive order, resulting into heart burning and injustice which is yet to be redressed by the Government. From whom the petitioners are already disappointed as the Government has no time even to look into the report of the Pay Anomalies Committee. That is why the petitioners are back to this Court seeking justice.

10. The learned advocate submitted that justifying their demands they represented that similarly situated persons in the neighbouring State of Maharashtra are given much higher pay scale which is revised from time to time. As against that here this class of Government servants to which the petitioners belong was omitted by the First Pay Commission. Thereafter, this omission continued by all subsequent Pay Commissions. That is why even as on date, the position is that the Mental Hospital Attendants do not get their pay scales revised in regular course.

11. The learned advocate for the petitioners to illustrate this invited attention of this Court to report of the Second Pay Commission wherein the question of revising the pay scales of this class of Government servants was not considered and it fell in the 'general observations' of the Second Pay Commission, produced in para 9, which reads as under:

> "The Commission has dealt with mainly prominent categories under the Health and medical section under the Directorate, relying on the factual information supplied by the Department and/ or

> oral evidence collected by the Commission. .. .. However, in some such cases, for want of full and accurate information the Commission had to content itself by allowing normal revision or marginal improvement as a result of too general an examination along with similar case, if any, in other Department.

The pay scale of Rs.110-140 of the Head Male Attendant was recommended to be of Rs.210-270. Whereas the Head Female Attendant and other categories of Female Attendants carrying pay scale of Rs.90-110 were recommended revised pay scale of Rs.196-232.

11.1 The learned advocate for the petitioners submitted that their association continued to represent their case before the Government, but for no avail. All relevant material which the petitioners could lay their hand was placed before the Government for its kind consideration. As it transpires from the record of the case, it fell on deaf ears of the Government and the Government did not pay any heed to any of the representations of the petitioners. The petitioners did set out the posts with which the work of the petitioners can be compared with and the scale of such posts. For example, the post of 'Head Male Attendant' was compared with the post of Subedar in Jail Department. The pay scale adopted for Head Male Attendant is Rs.210-270/-, while the pay scale which is granted to 'Subedar' in Jail Department is Rs.330-480/-. This anomaly continued. That is why as a last resort the petitioners approached this Court by filing this petition in the year 1994.

12. Last but not least, Mr.Sinha, the learned advocate for the petitioners made available the Gujarat Civil Service (Revision of Pay) Rules, 1998, whereby the Head Male Attendant is now granted revised Pay Scale of Rs.2650-4000/-, on the basis of its earlier pay scale of Rs.800-1150/-. But still it remains to be Class IV pay scale. The petitioners and the posts held by similarly situated persons are Class III posts and the authorities could not have down graded them by issuing a Government Resolution dated 14.06.1971 saying that these posts are to be considered to be that of Class IV category. Mr.Sinha, the learned advocate submitted that in fact comparison of the Head Male Attendant and other similarly situated employees is to be with Psychiatric Nurse/ Mid Wife, by virtue of the duties discharged by the petitioners and the nature of duties discharged by Psychiatric Nurse. This aspect is required to be considered by a Committee of Experts, to which this Court

has relegated the petitioners, but only on account of non action of the Government, the matter is required to be decided by this Court. The Court is not expressing any opinion on this submission of the learned advocate. Any observations of this Court be not considered as constitution a bar for the matter being considered by the experts. As and when the matter is considered and recommendations are made by any expert committee it will be open for the Government to accept the same.

13. The Court is conscious of the fact that this is a matter wherein on experts' opinion, an exercise is required to be undertaken by the authorities. Precisely that is why the matter was directed to be considered by the Pay Anomalies Committee. And on availability of tis report it was for the Government to act upon. But then the Government has failed in discharging its duty to consider that report and redress the grievance of the petitioners. That is why without waiting any further in view of the Government's inaction and non consideration of the report for such a long, i.e. from 15.05.2000 to 16.03.2004 which shows the approach of the Government to a problem of this amplitude the matter is taken up for hearing. Apparently, an error is committed by the authorities in issuing Government Resolution dated 14.06.1971 whereby it is decided that, 'the Attendants attached to the Mental Hospital should be considered in Class IV category'. Therefore, following directions are issued:

(i) Government is directed to treat the petitioners and other similarly situated persons in Class III with effect from 31st January 1994, and as a necessary consequence thereof, they should be paid immediately the pay scale available to Class III post.

Direction no.(i) be implemented forthwith, but in no case later than six weeks from the date of receipt of a copy of this judgement.

(ii) Government shall consider the report of the Pay Anomaly Committee within ten weeks from the date of the receipt of the copy of this judgement. and in case the Government decides to accept the same and under the report if the petitioners are to get more benefits than the benefits flowing from the aforesaid direction, then the same should be granted to the petitioners within six months from the date of the decision of acceptance of the report.

14. With the above directions the petition is allowed. Rule is made absolute. No order as to costs.

(Ravi R. Tripathi, J.)

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